

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0739**

*Modified*  
*No Disqualification*  
*Ineligible Week 24-21*

**PROCEDURAL HISTORY:** On July 16, 2021, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was discharged not for misconduct within fifteen days of claimant's planned quit without good cause, and was disqualified from receiving unemployment insurance benefits effective June 20, 2021 (decision # 145121). Claimant filed a timely request for hearing. On August 31, 2021, ALJ Kaneshiro conducted a hearing, and on September 1, 2021 issued Order No. 21-UI-173784, concluding that claimant quit work without good cause and was disqualified from receiving benefits effective June 20, 2021. On September 9, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**WRITTEN ARGUMENT:** EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Basin Tire Service Inc. employed claimant from July 2020 until June 17, 2021, last as their accounts payable and payroll clerk.

(2) Beginning in January 2021, claimant increasingly felt as though the employer would ask claimant to perform extra duties, in addition to her own job duties, when the employer did not know how to provide their accountant with information the accountant requested. When claimant complained to the office manager about the extra duties or other work matters, the office manager would "put down" claimant such that she felt "belittled" and would cry. The office manager would tell claimant that she would "pray for" claimant. Transcript at 7, 8.

(3) In early 2021, the owner applied for COVID-19-related unemployment insurance benefits and asked claimant to reply to inquiries from the Department that the employer was "overstaffed," and that due to COVID-19, the employer did not have sufficient hours for the owner to work. Transcript at 10. Claimant did not agree that the employer had insufficient work for the owner, but took the owner off the employer's payroll. The owner began to receive benefits and went on a vacation to Oklahoma.

(4) During June 2021, claimant suspected that the employer was paying the owner's son for items ordered from the employer's vendors without first including the items in the employer's inventory. Claimant also suspected that the son subsequently sold the items on eBay and that the employer declared them as a loss. Claimant believed that the employer was "money laundering," and for that reason, did not want to participate in the business transactions between the employer and the owner's son. Transcript at 11. Claimant reported her suspicions to the office manager, who told claimant to "ignore it." Transcript at 12.

(5) Throughout her employment, claimant felt increasingly stressed from work, including about the possible implications of assisting with what she believed to be illegal activity involving the owner's unemployment benefits and his son's business transactions. In 2021, claimant was diagnosed with and began taking medication to treat high blood pressure.

(6) In early June 2021, when the owner returned from his vacation, claimant put him back on the employer's payroll. On June 9, 2021, after the owner learned that claimant had put him back on the employer's payroll, he went into claimant's office and yelled at claimant about having done so and said that he should not be back on payroll. Claimant discussed the matter with the office manager, which prompted "a big blow up" between claimant and the office manager, during which the office manager held up her hand as if tell claimant to stop speaking, and told claimant, "he's the owner . . . he can do what he wants," and "I will pray for you." Transcript at 10-11, 7.

(7) Later on June 9, 2021, claimant sent the office manager a text message stating that she planned to quit work effective after her shift on June 23, 2021, and that she would train her replacement during her notice period. Claimant planned to quit due to the impact of work stress on her health. The office manager's treatment of claimant and claimant's belief that she was being pressured to engaged in illegal conduct was causing claimant stress that made her blood pressure worse. June 10, 2021 was the last day claimant performed services for the employer.

(8) On June 11, 2021, claimant went to a hospital because she was experiencing chest pains associated with high blood pressure. Claimant called out for work or requested days off for all her shifts from June 11, 2021 through June 16, 2021.

(9) On June 17, 2021, claimant sent the office manager a text message stating, "All I have done is sleep, the medication that they gave me makes me not feel that well, so I am not taking it anymore, and yes, I know you hired someone from Express. I hope she works out well. Could she please not clean out my desk until I get there." Transcript at 36. The office manager replied, "We are waiting for you." Transcript at 36. Claimant also asked the office manager if she would put claimant down for sick time for June 21, 22 and 23, 2021. Claimant did not request time off for June 18, 2021 when she contacted the employer on June 17, 2021.

(10) Had claimant been willing to work until June 23, 2021, the employer would have permitted her to do so, and expected claimant to continue working until June 23, 2021 to train her replacement.

(11) Claimant was scheduled to work on Friday, June 18, 2021, but did not call or report to work for her scheduled shift.

(12) Prior to Saturday, June 19, 2021, the employer temporarily suspended claimant's personal login to accounts payable because they had some questions about changes claimant had made in the system. The employer also instructed claimant's coworkers that if claimant reported to the office and acted as though she was leaving and not returning to work, to ask her for her office keys. Although June 19, 2021 was not a regular employer workday, and claimant was not scheduled to work, claimant went to the employer's office. Claimant was unaware that the employer had changed her login and when she attempted to log in to the payroll system, was not able to do so. Some of claimant's belongings had been removed from shelves in claimant's office, and claimant began to pack the remainder of her belongings. A coworker saw claimant and told claimant that she was instructed to ask for claimant's key if she saw claimant at the office. Claimant took her belongings, left the employer's office and did not return to work.

**CONCLUSIONS AND REASONS:** Claimant voluntarily left work without good cause within 15 days of her planned voluntary leaving with good cause. Claimant is disqualified from receiving benefits through the week ending June 19, 2021. The disqualification ends effective June 20, 2021.

**Nature of the Work Separation.** The first issue in this case is whether claimant quit or was discharged. If the employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (September 22, 2020). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b). "Work" means "the continuing relationship between an employer and an employee." OAR 471-030-0038(1)(a).

The order under review concluded that although claimant believed the owner discharged her when it packed some of her belongings, suspended her computer login, and requested her office key, the work separation was not a discharge, but instead was a voluntary quit on June 23, 2021. Order No. 21-UI-173784 at 3. The order reasoned that the work separation was a quit because, despite what claimant encountered when she went to the office on June 19, 2021, the employer had granted claimant sick time off from work from June 21, 2021 until June 23, 2021, and therefore there would have been a continuing relationship between claimant and the employer until June 23, 2021. Order No. 21-UI-173784 at 3. The record does not fully support this conclusion.

The record shows that on June 9, 2021, claimant notified the employer that she was quitting work effective June 23, 2021, but also shows that on June 17, 2021, claimant quit before the end of her notice period. The employer was willing to let claimant continue working until June 23, 2021 and did not prevent claimant from doing so. The employer suspended claimant's login because they found inconsistencies in their payroll, and they understandably preferred to discuss the matters with claimant at work before allowing her to regain access to the system. Suspending claimant's login was not tantamount to preventing claimant from continuing to work. It was also understandable that the employer had packed some of claimant's belongings by June 19, 2021, and that they would want claimant's key if she appeared to be packing her belongings to leave the office.

Claimant's conduct, however, showed her unwillingness to continue working for the employer after June 17, 2021. Claimant last performed services for the employer on June 10, 2021, and called out from work every day from June 11 through June 17, 2021, and was a no call, no show for work on June 18, 2021. Claimant did not request time off for June 18, 2021 when she contacted the employer on June 17,

2021. When claimant contacted the office manager on June 17, 2021, she told the office manager that she knew the employer already had claimant's replacement, and asked that they not clean out claimant's desk until claimant got to the office. Claimant did not state when she would be returning to work. To the contrary, claimant asked the office manager to apply claimant's remaining sick days to claimant's last three days of her notice period (June 21, 22 and 23, 2021) in an apparent effort to receive pay despite her unwillingness to continue working for the employer. The record does not show that claimant knew as of June 17, 2021 that she would be unable to work for the last three days of her notice period due to illness. Claimant went to the office on a Saturday, which was not a normal workday for the employer, and when she was not scheduled to work, and packed up her belongings. Overall, the evidence shows that the employer was willing to allow claimant to continue working until June 23, 2021, but claimant was not willing to continue working after June 17, 2021. Claimant therefore quit on June 17, 2021, the week before her planned quit date of June 23, 2021.

**Voluntary Quit on June 23, 2021.** A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless they prove, by a preponderance of the evidence, that they had good cause for leaving work when they did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause . . . is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work." OAR 471-030-0038(4) (September 22, 2020). "[T]he reason must be of such gravity that the individual has no reasonable alternative but to leave work." OAR 471-030-0038(4). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for their employer for an additional period of time.

ORS 657.176(6) states, "For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that: (a) The separation would be for reasons that constitute good cause; (b) The individual voluntarily left work without good cause prior to the date of the impending good cause voluntary leaving date; and (c) The actual voluntary leaving of work occurred no more than 15 days prior to the planned date of voluntary leaving, then the separation from work shall be adjudicated as if the actual voluntary leaving had not occurred and the planned voluntary leaving had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the actual voluntary leaving occurred through the week prior to the week of the planned good cause voluntary leaving date."

Claimant planned to leave work with good cause on June 23, 2021. The prospective quit was with good cause because no reasonable and prudent person of normal sensitivity, exercising ordinary common sense would have been willing to continue working for the employer under the belief they were engaging in potentially illegal conduct which was causing them to risk their health due to high blood pressure. The combination of stressors claimant experienced at work created a grave situation for her by risking her health. Claimant did not have a reasonable alternative but to leave work on June 23, 2021. There was no indication in the record that the office manager's failure to support claimant when claimant needed assistance or concerns about the legality of workplace practices at that time would change. The owner's angry reaction when claimant put him back on the payroll showed that it was unlikely that the owner would permit claimant to refrain from engaging in what she considered unlawful conduct. The preponderance of the evidence shows that claimant had good cause for her planned quit on June 23, 2021.

**Voluntary Quit on June 17, 2021.** However, claimant's actual voluntary leaving was on June 17, 2021 and was without good cause. The record does not show that claimant faced a situation of such gravity that she had no reasonable alternative but to quit on June 17, 2021, especially since she had less than a week remaining until her planned quit date of June 23, 2021 and the employer had hired someone else to perform the job duties claimant believed might constitute unlawful conduct. The employer had permitted her to take time off as necessary from June 11 to June 17, 2021 for her medical condition. Claimant could have continued to work, or if she continued to be ill after June 17, 2021, could have requested time off due to illness had her health not improved. When claimant requested that her remaining sick leave be applied to her shifts on June 21, 22 and 23, 2021, claimant did so prematurely, because the record does not show that she knew on June 17, 2021 that she would be unable to work due to illness on those days.

**Application of ORS 657.176(6).** Because claimant voluntarily left work on June 17, 2021 without good cause, within fifteen days of June 23, 2021 when claimant planned to quit with good cause, ORS 657.176(6) applies to this case. Claimant is therefore disqualified from receiving unemployment insurance benefits through the week ending June 19, 2021. The disqualification ends effective June 20, 2021, during the week of claimant's planned quit for good cause. *See* ORS 657.176(6).

**DECISION:** Order No. 21-UI-173784 is modified, as outlined above.

D. Hettle and A. Steger-Bentz;  
S. Alba, not participating.

**DATE of Service: October 15, 2021**

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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# Understanding Your Employment Appeals Board Decision

## English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

## Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyong ito.

## Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

## Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

## Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

**Khmer**

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**Laotian**

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

**Arabic**

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**Farsi**

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
[www.Oregon.gov/Employ/eab](http://www.Oregon.gov/Employ/eab)

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